

a) measuring about five parts of the nonionic surfactant to about one part of propofol and heating said nonionic surfactant to a preparation temperature above its melting point; and

b) combining the nonionic surfactant with predetermined amounts of water-immiscible solvent, ethanol and propofol; thereby forming the base composition.

### **Restriction Requirement**

In response to the examiner's restriction requirement, applicants elect with traverse new claims 74-80, and 84-103 drawn to a self-microemulsifiable base composition (Group I claims). Upon the allowance of a generic claim, applicants reserve the right to have all claims considered for allowance.

### **Remarks/Argument**

The examiner submits that the original claims do not relate to a single inventive concept as required by PCT Rule 13.1, because the claims do not disclose the same or corresponding special features as required by PCT Rule 13.2. The examiner contends that the special feature linking the claims is a "composition comprising propofol and a nonionic surfactant" and that Hong et al. establishes that the composition does not exhibit the required special feature. In response to the examiner, applicants' respectfully submit that the amended claims do, in fact, relate to a single inventive concept and reveal a special linking feature. The amended claims disclose a base composition comprising propofol and a nonionic surfactant having a specific claimed chemical structure and "with the base composition not containing any other nonionic surfactant other said nonionic surfactant having said structure" (See, new claims 74 and 84). In other words, the amended claims disclose a base composition that is specifically limited to a propofol composition that contains a single nonionic surfactant having the claimed structure.

Hong et al. discloses and claims a microemulsion injection composition for general anesthesia formed by dissolving "propofol in oil, and adding Solutol HS

15 as a non-ionic surfactant and a suitable co-solvent or co-surfactant” (Specification, page 5, lines 11 – 16; and See also, claim 1). Applicants’ amended claims, however, are limited to a base composition that comprises propofol and a single nonionic surfactant having the claimed chemical structure. Hong et al., on the other hand, does not disclose or teach a composition that is limited to propofol and a single nonionic surfactant. Rather, the reference discloses compositions that contain propofol, Solutol HS 15, and either a co-surfactant or a co-solvent. In fact, Hong et al. provides that “[w]hen the concentration of the co-solvent or co-surfactant is about 1wt% or less, a microemulsion is not formed” (Specification, page 7, lines 19-20; emphasis supplied). In other words, the reference teaches that a co-surfactant or co-solvent *is required* in order to form a composition that is capable of forming a microemulsion. The novel teaching of the present application is that no such co-surfactant or co-solvent is needed to form a self-microemulsifiable base composition. Further, the reference discloses and claims that the propofol is dissolved in oil. But, no such similar requirement is disclosed or claimed by applicant. In addition, the reference does not disclose a group of nonionic surfactants having the claimed chemical structure. Finally, the reference does not disclose a base composition having a concentration of about eight (8) parts or more of nonionic surfactant to one (1) part of propofol, with no other compounds contained in the composition. Although an example set forth in the reference discloses a ratio of ten (10) parts of Solutol HS-15 to one (1) part of propofol, the example also discloses that the composition contains the required co-surfactant as polyethylene glycol 300 (Specification, bottom of page 8 - top of page 9).

As to new claim 84 (corresponding to cancelled claim 21) and its associated dependent claims, a base composition is disclosed that comprises: propofol, a nonionic surfactant according to the chemical structure set forth in new claim 74 (corresponding to cancelled claim 1); a water-immiscible solvent which is a biocompatible monoester, diester, or trimester; and ethanol. A

comparison of this base composition to the compositions disclosed in Hong et al. reveals that the reference does not disclose a water immiscible solvent. In fact, the only solvents disclosed by the reference are all water *miscible* solvents, with the possible exception of a rather ambiguous description in the detailed description of "capric acid and any ester thereof" and in the claims of "capric acid, and ester thereof" (Specification, page 7, lines 18-19; and claim 5). In any event, applicant has excluded capric acid from new claim 92 (corresponding to cancelled claim 61). Additionally, contrary to the requirements set forth in Hong et al. and as pointed out above, applicants' claims do not require that propofol be dissolved in oil before being combined with the nonionic surfactant.

In summary, applicants' respectfully submit that the amended claims do not lack a single inventive concept and a special linking feature in view of the disclosure set forth in Hong et al.

Respectfully submitted,

By: 

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